

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ABRAHAM KAHAN,

Plaintiff,

-against-

CHASE BANK,

Defendants.

NOT FOR PUBLICATION

**ORDER ADOPTING IN PART
AND MODIFYING IN PART
REPORT AND
RECOMMENDATION**

10-CV-0335 (KAM) (RLM)

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MATSUMOTO, United States District Judge:

Presently before the court is a Report and Recommendation ("R&R") issued by Magistrate Judge Roanne L. Mann on December 23, 2010, recommending that the court dismiss with prejudice plaintiff Abraham Kahan's claims against defendant Chase Bank for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b) and for violations of judicial discovery orders pursuant to Federal Rule of Civil Procedure 37(b) (2) (A) (v), and that default judgment be entered on defendant's counterclaims pursuant to Federal Rule of Civil Procedure 37(b) (2) (A) (vi). (See ECF No. 23, R&R dated 12/23/2010 at 2-3.)

Notice and a copy of the R&R were sent electronically to defendant Chase Bank via the court's electronic filing system and by mail to plaintiff Abraham Kahan at his last known address via Federal Express on December 23, 2010. (See Notice of Electronic Filing accompanying R&R dated 12/23/2010; ECF 23-1,

Addt'l Attachment to R&R added 1/13/2011, Certificate of Service FedEx Airbill.) As explicitly noted at the end of the R&R, any objections to the R&R were to be filed by January 3, 2011. (See R&R at 3.) Because, at the time, service of the R&R on plaintiff was not evident from the electronic docket, the court directed the Clerk to serve another copy of the R&R, along with a copy of the court's order setting a new deadline of January 31, 2011 for filing objections to the R&R, on plaintiff Abraham Kahan via Federal Express at his last known address. (See ECF Order dated 1/12/2011.) The Clerk served a copy of the R&R and of the court's order on plaintiff Abraham Kahan on January 12, 2011. (See ECF Certificate of Service dated 1/12/2011.) The period for filing objections has expired, and no objections to Magistrate Judge Mann's R&R have been filed.

In reviewing a R&R, the district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). Where no objection to the R&R has been filed, the district court "'need only satisfy itself that there is no clear error on the face of the record.'" *Urena v. New York*, 160 F. Supp. 2d 606, 609-10 (S.D.N.Y. 2001) (*quoting Nelson v. Smith*, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985)).

Upon a review of the R&R, and considering that the parties have failed to object to any of Judge Mann's well-grounded recommendations, the court finds no clear error in Judge

Mann's recommendation that the court dismiss with prejudice plaintiff Abraham Kahan's claims against Chase Bank, and hereby adopts that portion of the R&R as the opinion of the court. However, in an excess of caution and to ensure that plaintiff receives notice on any motion to enter a default judgment on the counterclaims, the court respectfully modifies the R&R with respect to the entry of default judgment on Chase Bank's counterclaims. Rather than entering judgment on the counterclaims, defendant Chase Bank is hereby granted leave to move for default judgment or shall otherwise dismiss its counterclaims against Abraham Kahan by no later than March 4, 2011.

Accordingly, plaintiff Abraham Kahan's claims against Chase Bank are hereby dismissed with prejudice. Defendant Chase Bank shall move for default judgment or voluntarily dismiss its counterclaims against Abraham Kahan by no later than March 4, 2011. Defendant shall serve a copy of this Order on plaintiff and file a Declaration of Service by no later than February 28, 2011.

SO ORDERED.

Dated: February 25, 2011
Brooklyn, New York

/s/
Kiyo A. Matsumoto
United States District Judge